

ORIGINAL

FEDERAL MARITIME COMMISSION

FALCON SHIPPING INC., ABDIEL
FALCON-APPLICATION FOR A LICENSE
AS AN OCEAN TRANSPORTATION
INTERMEDIARY

Docket No. 11-10

Served: January 5, 2012

BY THE COMMISSION: Richard A. Lidinsky, Jr.,
Chairman; Joseph E. Brennan, Rebecca F. Dye, Michael A.
Khouri, and Mario Cordero, *Commissioners*.

Memorandum Opinion and Order

The Federal Maritime Commission (FMC or Commission) issued an Order on June 23, 2011, directing Falcon Shipping Inc. and Abdiel Falcon (collectively Falcon) to show cause why the Commission's Bureau of Certification and Licensing's (BCL's) May 18, 2011 determination to deny Falcon an Ocean Transportation Intermediary (OTI) license should not be upheld. For the reasons set forth below, we have determined to uphold BCL's determination.

BACKGROUND

On March 8, 2011, Falcon filed an on-line application for an OTI license. On May 18, 2011, BCL issued a notice of intent to deny Falcon's application based upon the provisions of 46 C.F.R. §

515.15. BCL determined that Falcon and Mr. Abdiel Falcon did not have the required character to be licensed as an OTI. Also on May 18, 2011, Falcon filed a timely request by email to BCL for a hearing based upon BCL's notice of intent to deny Falcon's application for an OTI license. On June 10, 2011, the Directors of the Bureau of Enforcement (BOE) and BCL made a recommendation to the Commission that a proceeding be instituted directing Falcon Shipping Inc. and Mr. Abdiel Falcon to show cause why BCL's determination to deny the request for a license should not be upheld. In the recommendation, BCL and BOE also deemed Falcon's email sufficient under 46 C.F.R. § 515.15 to entitle Falcon to a hearing. On June 23, 2011, the Commission issued an Order to Show Cause making BOE a party to the proceeding.

On July 1, 2011, Falcon filed a statement in support of its request for a license. On July 28, 2011, BOE filed a memorandum of law supporting BCL's determination to deny Falcon an OTI license.

DISCUSSION

The two issues in this matter are whether Falcon possesses the requisite character to be issued an OTI license and whether the Commission's procedures were properly followed in denying the application for a license. BCL and BOE properly concluded that Falcon does not currently possess the requisite character to be issued an OTI license; moreover, the Commission's regulations were properly followed.

A. Issuance of License

Section 19 of the Shipping Act of 1984, 46 U.S.C. § 40901, provides that "the Commission shall issue an OTI license to a person that the Commission determines to be qualified by experience and character." Furthermore, the Commission's regulations at 46 C.F.R. § 515.14 state that:

The Commission will issue a license if it determines, as a result of its investigation, that the applicant possesses the necessary experience and character to render ocean transportation intermediary services and has filed the required bond, insurance or other surety.

During the application process, BCL learned that on December 29, 2010, Mr. Falcon pled guilty and was convicted of a felony smuggling violation. On May 18, 2011, BCL determined that Falcon did not possess the necessary character to be issued a license based on Mr. Falcon's recent felony conviction for Unlawful Importation of Goods, 18 U.S.C. § 545 ("smuggling"). Notice of Denial at 1. BOE correctly stated in its memorandum that the burden of proof rests with Falcon. BOE Memorandum at 6, citing Indep. Ocean Freight Forwarder Application-Lesco Packing Co. Inc., 19 F.M.C. 132, 136 (FMC 1976); United Church of Christ v. FCC, 425 F.2d 543, 545, 549-50 (D.C. Cir. 1969). Falcon has submitted no persuasive evidence (affidavits, documents) which supports its petition for a license.

Mr. Falcon has merely stated that because he believes he can serve the shipping public honestly, has applied for a license, and followed the terms of his probation, he has demonstrated sufficient character for a license. Falcon Response at 1-2. His argument does not provide sufficient support. With regard to the mere fact that he is applying for a license being evidence of his character, BOE correctly noted that in his statement he is essentially admitting under oath that he was previously practicing without a license in violation of the Shipping Act, 46 U.S.C. § 40901. See BOE Memorandum at 7. Moreover, BOE also demonstrated that Mr. Falcon's response provided more evidence against his character. Mr. Falcon stated that he "was not told that Goodfellas LLC intention was to disguise boxes and import a different type of refrigerant . . ." Falcon Response at 2. Nevertheless the plea agreement, signed by Mr. Falcon, stated that he knowingly "passed on" inaccurate documents, falsely identifying one refrigerant as another. Verified Affidavit (Affidavit) of Sandra L. Kusumoto, Attach. 4 at 5.

In support of his license, Mr. Falcon has only succeeded in further undermining his own credibility by bringing to the attention of the Commission another violation of the Shipping Act and making a statement to the Commission that is contradicted by his signed plea agreement. His other self-serving statements that he has “made a step in the right direction,” by applying for a license, adhered to the “policies and procedures” of the Court and Office of Probation, and believes that “Falcon Shipping can serve the shipping business in a reputable, honest, and productive way,” provide little support in light of the further lack of credibility and Shipping Act violation his response demonstrates. Falcon Response at 1-2.

There is also substantial precedent by the Commission supporting denial of a license in situations involving deceptive acts such as those admitted by Mr. Falcon. In G.R. Minon – Freight Forwarder License, 12 F.M.C. 75, 80-82 (FMC 1968), the Commission held that involvement in an illegal scheme, with other indications of moral turpitude, justified denial of an application. In Bolton and Mitchell, Inc.- Indep. Ocean Freight Forwarder License No. 516, 17 F.M.C. 328, 331 (FMC 1974), the Commission noted that “if a freight forwarder were found to have acted illegally in concert with his clients it may not be ‘fit’ to assume the responsibilities of a freight forwarder.” See also Commonwealth Shipping Ltd., Cargo Carriers Ltd., Martyn C. Merritt and Mary Anne Merritt-Submission of Materially False or Misleading Statements to the Fed. Mar. Comm’n and False Representation of Common Carrier Vessel Operations, 29 S.R.R. 1408, 1412-14 (2003); AAA Nordstar Line Inc.—Revocation of License No. 12234, 29 S.R.R. 663, 664 (2002) (revoking a license when the Commission could not rely on the integrity of the licensee); Stallion Cargo, Inc.- Possible Violations of Sections 10(a)(1) and 10(b)(1) of the Shipping Act of 1984, 29 S.R.R. 665, 683-84 (2001); Indep. Ocean Freight Forwarder License E.L. Mobley, Inc., 21 F.M.C. 845, 847 (FMC 1979) (where the Commission stated that an act of forgery was an egregious violation of the Commission’s regulations); 46 C.F.R. § 515.31 (e) (2010).

Mr. Falcon's violation of the Shipping Act of 1984 by operating without a license; his statement to the Commission that contradicts his plea agreement; his recent involvement in an illegal scheme and deceptive practice; and his failure to meet his burden through persuasive evidence, all warrant denial of his application. Mr. Falcon has failed to meet his burden of overcoming the heavily supported precedent and authority that weighs strongly against allowing him an OTI license.

B. Commission Procedures

The Commission's regulations were properly followed. The Commission's regulations at 46 C.F.R. § 515.13 state that the Commission "shall conduct an investigation of the applicant's qualifications for a license." and that the investigation may address "the character of the applicant and its qualifying individual." In addition, the Commission's regulations at 46 C.F.R. § 515.15 state that:

If the Commission determines, as a result of its investigation, that the applicant: (a) Does not possess the necessary experience or character to render intermediary services . . . then, a letter of intent to deny the application shall be sent to the applicant by certified U.S. mail or other method reasonably calculated to provide actual notice, stating the reason(s) why the Commission intends to deny the application. If the applicant submits a written request for hearing on the proposed denial within twenty (20) days after receipt of notification, such hearing shall be granted by the Commission pursuant to its Rules of Practice and Procedure contained in part 502 of this chapter

On March 8, 2011, Falcon filed an online application for an OTI license, which was investigated by BCL in accordance with 46 C.F.R. § 515.13. Affidavit at 1-2. The investigation resulted in a determination that Falcon did not possess the character to possess an OTI license and on May 18, 2011, BCL issued a notice of intent

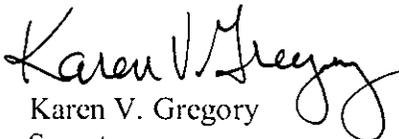
to deny Falcon's application. Notice of Denial at 1. In accordance with 46 C.F.R. § 515.15, the notice of intent was provided to Mr. Falcon with the reason for the denial. On May 18, 2011, within 20 days notice, Mr. Falcon filed a written email request for a hearing on the proposed denial, in accordance with 46 C.F.R. § 515. A Show Cause hearing was ordered pursuant to Sections 11 and 19 of the Shipping Act of 1984 and the following deadlines were established: affidavits of fact and memoranda of law to be filed by respondents by July 13, 2011; reply affidavits of fact and memoranda of law to be filed by BOE by July 28, 2011. All parties submitted documentation within the applicable deadlines. Pursuant to 46 C.F.R. § 502.61, the final decision of the Commission was correctly ordered to be issued by December 23, 2011. Subsequently, the date was extended to January 6, 2012.

CONCLUSION

In sum, BCL properly concluded that Falcon does not possess the requisite character to be issued an OTI license; moreover, the Commission's regulations were properly followed. As a result, Falcon's application should be denied.

THEREFORE, IT IS ORDERED, That the denial of an Ocean Transportation Intermediary license by the Bureau of Certification and Licensing for Falcon Shipping Inc. and Abdiel Falcon is Affirmed.

By the Commission.


Karen V. Gregory
Secretary